

ACT 285

H.B. NO. 2568

A Bill for an Act Relating to Background Checks.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to allow the department of health to designate an entity to perform services on its behalf relating to background checks for employment, volunteer, contracting, licensure, or certification purposes.

SECTION 2. Section 321-15.2, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (b), (c), (d), (e), (f), and (g) to read:

“(b) The department shall adopt rules pursuant to chapter 91 to ensure the reputable and responsible character of all prospective applicants, operators, direct patient access employees, and adult volunteers of a healthcare facility, and, in the case of any healthcare facility operated in a private residence, all adults living in the home other than the clients. These rules, among other things, shall specify how the department or the department’s designee may conduct criminal history record checks in accordance with section 846-2.7.

(c) All applicants and prospective operators shall:

- (1) Be subject to criminal history record checks in accordance with section 846-2.7;
- (2) Authorize the disclosure to the department or the department’s designee of criminal history record information;
- (3) Sign a waiver form stating that the department or the department’s designee shall not be liable to the applicant or prospective operator; and
- (4) Consent to be fingerprinted for the purpose of requesting criminal history record information from the Federal Bureau of Investigation and the Hawaii criminal justice data center.

(d) All prospective direct patient access employees and adult volunteers of healthcare facilities and, in the case of any healthcare facility operated in a private residence, all adults living in the home other than the clients shall:

- (1) Consent to be fingerprinted;
- (2) Provide all necessary information for the purpose of enabling the department or the department’s designee to conduct the criminal history record checks; and
- (3) Sign a waiver form stating that the department or the department’s designee shall not be liable to the employee or volunteer.

(e) The department or the department's designee may request criminal history record information which includes Federal Bureau of Investigation data through the Hawaii criminal justice data center on all prospective applicants, operators, direct patient access employees, and adult volunteers of healthcare facilities. In addition, in the case of any healthcare facility to be operated in a private residence, the department of health or the department's designee may request criminal history record information which includes Federal Bureau of Investigation data through the Hawaii criminal justice data center for all adults residing in the home who are not clients.

(f) The department or the department's designee shall make a name inquiry into the criminal history records or conduct criminal history record checks of all prospective applicants, operators, direct patient access employees, and adult volunteers at the healthcare facility, and, in the case of any healthcare facility operated in a private residence, all adults living in the home other than the clients.

(g) The department may revoke or suspend a current license, impose penalties or fines, or deny an application for a license under rules adopted pursuant to chapter 91 if the applicant, operator, employee, or adult volunteer at the healthcare facility or, in the case of any healthcare facility operated in a private residence, any adult living in the home other than the client, refuses to authorize the department or the department's designee to conduct a criminal history record check, obtain criminal history record information for verification, or consent to be fingerprinted. In addition, the department may revoke or suspend a current license, impose penalties or fines, or deny an application for a license if the applicant, operator, direct patient access employee, or adult volunteer at the healthcare facility, or, in the case of a healthcare facility operated in a private residence, any adult living in the home other than the client, has any disqualifying information. The department may also revoke or suspend a current license, impose penalties or fines, or deny an application for a license if the department determines, based upon consideration of the criminal history information, that the applicant, operator, direct patient access employee, or adult volunteer at the healthcare facility, or, in the case of a healthcare facility operated in a private residence, any adult living in the home other than the client, is unsuitable to work or live in close proximity to the residents of the healthcare facility such that the health, safety, and welfare of the residents of the healthcare facility could be at risk."

2. By amending subsections (j) and (k) to read:

"(j) The department, or the department's designee, in obtaining and relying upon the criminal history record checks, is presumed to be acting in good faith and shall be immune from civil liability for taking or recommending action based upon the criminal history record information. The good faith presumption may be rebutted upon a showing by the person or entity of a lack of good faith, and proof by a preponderance of the evidence, that the department relied upon information or opinion that it knew was false or misleading.

(k) Any applicant or operator who receives information from the department or the department's designee relating to a criminal history record check of a direct patient access employee or adult volunteer or, in the case of a healthcare facility operated in a private residence, an adult living in the home other than the clients, is presumed to be acting in good faith and shall be immune from civil liability for taking or recommending action based upon the department's recommendation or direction. Nothing in this section shall affect rights, obligations, remedies, liabilities, or standards of proof under chapters 368 and 378.

Criminal history record information shall be used exclusively by the department or the department's designee for the sole purpose of determining

whether an applicant, operator, direct patient access employee, or adult volunteer at a healthcare facility, or, in the case of a facility operated in a private residence, any adult living in the home other than the clients is suitable for working or living in close proximity to residents of a healthcare facility such that the health, safety, and welfare of the residents would not be at risk.”

SECTION 3. Section 321-171.5, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) to read:

“(b) Except as otherwise specified, any person who seeks employment with the department of health, or who is employed or seeks employment with a provider or subcontractor in a position that necessitates non-witnessed direct contact with clients when providing non-witnessed direct mental health services, shall:

- (1) Be subject to criminal history record checks in accordance with section 846-2.7; and
- (2) Provide to the department of health or the department’s designee written consent for the department or the department’s designee to obtain criminal history record information for verification.

Information obtained pursuant to subsection (a) and this subsection shall be used exclusively by the department of health for purposes of determining whether a person is suitable for working in a position that necessitates non-witnessed direct contact with clients when providing non-witnessed direct mental health services. All such decisions shall be subject to federal laws and regulations currently or hereafter in effect.”

2. By amending subsection (d) to read:

“(d) This section shall not be used by the department of health or the department’s designee to secure criminal history record checks on persons who have been employed continuously on a salaried basis prior to July 1, 2000.”

SECTION 4. Section 333F-22, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (c), (d), and (e) to read:

“(c) An applicant to operate an adult foster home or developmental disabilities domiciliary home and all current and prospective employees of the applicant shall be subject to criminal history record checks in accordance with section 846-2.7, and shall provide consent to the department or the department’s designee to obtain criminal history record information for verification.

(d) Each existing provider or provider and all employees hired after the initial licensure or certification of the existing provider or provider shall be subject to criminal history record checks in accordance with section 846-2.7, and shall provide consent to the department or the department’s designee to obtain criminal history record information for verification.

(e) The department or the department’s designee is authorized to obtain criminal history record information through the Hawaii criminal justice data center on existing providers and their employees upon their next licensure or certification renewal date, and on any applicant and all current and prospective employees of the applicant, including all new employees after the applicant is issued a certification or license under this chapter.”

2. By amending subsection (g) to read:

“(g) The department may revoke a current license or certification or deny an application for a license or certification to operate an adult foster home or developmental disabilities domiciliary home under rules adopted pursuant to chapter 91 if the existing provider or employee of an existing provider, applicant,

current or prospective employee of the applicant, provider, or new employee of the provider refuses to submit to the department or the department's designee statements indicating criminal convictions, refuses to provide consent to the department or the department's designee to conduct a criminal history record check or obtain other criminal history record information for verification, refuses to be fingerprinted, has been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less; or if the department or the department's designee finds that the criminal history record of the existing provider or employee of an existing provider, applicant, current or prospective employee of the applicant, provider, or new employee of the provider indicates that the individual may pose a risk to the health, safety, or well-being of persons with developmental or intellectual disabilities living in the home.”

SECTION 5. Section 846-2.7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Criminal history record checks may be conducted by:

- (1) The department of health or the department's designee on operators of adult foster homes or developmental disabilities domiciliary homes and their employees, as provided by section 333F-22;
- (2) The department of health or the department's designee on prospective employees, persons seeking to serve as providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health services as provided by section 321-171.5;
- (3) The department of health or the department's designee on all applicants for licensure for, operators for, prospective employees, and volunteers at one or more of the following: skilled nursing facility, intermediate care facility, adult residential care home, expanded adult residential care home, assisted living facility, home health agency, hospice, adult day health center, special treatment facility, therapeutic living program, intermediate care facility for individuals with intellectual disabilities, hospital, rural health center and rehabilitation agency, and, in the case of any of the above facilities operating in a private residence, on any adult living in the facility other than the client as provided by section 321-15.2;
- (4) The department of education on employees, prospective employees, and teacher trainees in any public school in positions that necessitate close proximity to children as provided by section 302A-601.5;
- (5) The counties on employees and prospective employees who may be in positions that place them in close proximity to children in recreation or child care programs and services;
- (6) The county liquor commissions on applicants for liquor licenses as provided by section 281-53.5;
- (7) The department of human services on operators and employees of child caring institutions, child placing organizations, and foster boarding homes as provided by section 346-17;
- (8) The department of human services on prospective adoptive parents as established under section 346-19.7;
- (9) The department of human services on applicants to operate child care facilities, prospective employees of the applicant, and new employees of the provider after registration or licensure as provided by section 346-154;

- (10) The department of human services on persons exempt pursuant to section 346-152 to be eligible to provide child care and receive child care subsidies as provided by section 346-152.5;
- (11) The department of human services on operators and employees of home and community-based case management agencies and operators and other adults, except for adults in care, residing in foster family homes as provided by section 346-335;
- (12) The department of human services on staff members of the Hawaii youth correctional facility as provided by section 352-5.5;
- (13) The department of human services on employees, prospective employees, and volunteers of contracted providers and subcontractors in positions that place them in close proximity to youth when providing services on behalf of the office or the Hawaii youth correctional facility as provided by section 352D-4.3;
- (14) The judiciary on employees and applicants at detention and shelter facilities as provided by section 571-34;
- (15) The department of public safety on employees and prospective employees who are directly involved with the treatment and care of persons committed to a correctional facility or who possess police powers including the power of arrest as provided by section 353C-5;
- (16) The department of commerce and consumer affairs on applicants for private detective or private guard licensure as provided by section 463-9;
- (17) Private schools and designated organizations on employees and prospective employees who may be in positions that necessitate close proximity to children; provided that private schools and designated organizations receive only indications of the states from which the national criminal history record information was provided pursuant to section 302C-1;
- (18) The public library system on employees and prospective employees whose positions place them in close proximity to children as provided by section 302A-601.5;
- (19) The State or any of its branches, political subdivisions, or agencies on applicants and employees holding a position that has the same type of contact with children, vulnerable adults, or persons committed to a correctional facility as other public employees who hold positions that are authorized by law to require criminal history record checks as a condition of employment as provided by section 78-2.7;
- (20) The department of human services on licensed adult day care center operators, employees, new employees, subcontracted service providers and their employees, and adult volunteers as provided by section 346-97;
- (21) The department of human services on purchase of service contracted and subcontracted service providers and their employees serving clients of the adult and community care services branch, as provided by section 346-97;
- (22) The department of human services on foster grandparent program, retired and senior volunteer program, senior companion program, and respite companion program participants as provided by section 346-97;
- (23) The department of human services on contracted and subcontracted service providers and their current and prospective employees

that provide home and community-based services under Section 1915(c) of the Social Security Act, Title 42 United States Code Section 1396n(c), or under any other applicable section or sections of the Social Security Act for the purposes of providing home and community-based services, as provided by section 346-97;

- (24) The department of commerce and consumer affairs on proposed directors and executive officers of a bank, savings bank, savings and loan association, trust company, and depository financial services loan company as provided by section 412:3-201;
- (25) The department of commerce and consumer affairs on proposed directors and executive officers of a nondepository financial services loan company as provided by section 412:3-301;
- (26) The department of commerce and consumer affairs on the original chartering applicants and proposed executive officers of a credit union as provided by section 412:10-103;
- (27) The department of commerce and consumer affairs on:
 - (A) Each principal of every non-corporate applicant for a money transmitter license; and
 - (B) The executive officers, key shareholders, and managers in charge of a money transmitter's activities of every corporate applicant for a money transmitter license,as provided by section 489D-9;
- (28) The department of commerce and consumer affairs on applicants for licensure and persons licensed under title 24;
- (29) The Hawaii health systems corporation on:
 - (A) Employees;
 - (B) Applicants seeking employment;
 - (C) Current or prospective members of the corporation board or regional system board; or
 - (D) Current or prospective volunteers, providers, or contractors, in any of the corporation's health facilities as provided by section 323F-5.5;
- (30) The department of commerce and consumer affairs on:
 - (A) An applicant for a mortgage loan originator license; and
 - (B) Each control person, executive officer, director, general partner, and manager of an applicant for a mortgage loan originator company license,as provided by chapter 454F; and
- (31) Any other organization, entity, or the State, its branches, political subdivisions, or agencies as may be authorized by state law.”

SECTION 6. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved July 6, 2012.)